



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**CIVIL SUIT NO. 45 OF 2000 RD**

**MISHECK MUSILI MUTISO ..... PLAINTIFF**

**V E R S U S**

**1. MAHMOUD OSMAN**

**2. MOMBASA LINER ..... DEFENDANTS**

**J U D G M E N T**

In this case liability is agreed by the parties thus:-

Plaintiff 15%

Defendants jointly and severally 85%

On the issue of assessment of damages, the plaintiff called Dr. H.

Patel who examined the plaintiff on 15/9/00. The doctor gave evidence and produced a medical report. The plaintiff has to undergo a further operation costing about 60,000/-. He produced exhibit 1 and 2 – receipt for payment of shs. 2500/- The doctor also said that the injuries cause the plaintiff to walk slowly but that he is not totally unemployable. The plaintiff also gave evidence describing his injuries. He said he still feels pain and headaches and that he now walks with the support of a stick. He produced medical expenses receipts shs. 64,460/-. He said he used to play football but now with injury he is not able to enjoy the sport. He was 24 years at the time of accident. The medical report describes the injuries suffered as:-

- (1) Fracture humerus
- (2) Fracture 5th Metatarsal bone (left foot)
- (3) Severe crush injuries of right foot with deep wounds
- (4) Extensive wounds on back and head.
- (5) Contusion head and chest.

Treatment was at Voi, Coast General Hospital and Kilifi Hospital and Kikuyu Hospital. He was treated

for non-union of fracture of left arm and deformity of right foot. He also underwent operation of plating and bone graft for left humerus fracture. The plaintiff was injured on 10.10.98 and treated. He did not complete treatment until March 2000. He has deformity of right foot and he cannot therefore move swiftly. He suffers from permanent disability. He required further operation to remove metal plate and screw from left arm approximate charges about 60,000/-

Ms. Ngugi counsel for the plaintiff submitted for shs. 1.5.m for injuries loss of social life and for further operation. She claimed 60,000/- costs for future operation and proved specials in the sum of shs. 64,450/- and doctors report fees of 3000/-. police abstract shs. 100/- doctors attendance to give evidence sh. 25000/- costs and interest. M. Gor proposed 550.000/- to be reduced by 15% He conceded special damages claimed.

I have considered evidences the submission of counsel and the authorities cited. There being no objection I allow special damages as pleaded.

Shs. 64,450/- medical expenses

3,000/- medical report

2,500/- doctor attended to give evidence.

100/- police abstract.

70,050/-

On the issue of pain suffering and loss of amenities, I am convinced that a sum of shs. 650,000/- would compensate the plaintiff including shs. 60,000/- for further treatment. The plaintiff was employed in a restaurant before the accident. It is not shown what salary he was earning. The doctors evidence shows that the plaintiff is not completely unemployable. It appears he has not made any effort to get a job. Loss of future earnings is part of general damages suffered by an accident victim. From the medical evidence it is clear the plaintiff has disability and therefore his earning capacity would definitely be affected. For these reason I am inclined to make a lump sum for this item in the sum of shs. 250.000/-.

Judgment is therefore entered for plaintiff against the defendants jointly and severally in the sum of: -

1. Shs. 70.050/- special damages

Shs. 960.000/- general damages

Shs. 1030.050/-

The amount is subject to apportionment on the agreed liability. The plaintiff will have his costs and interest.

**Dated this 30th day of July, 2004.**

**J. KHAMINWA**

**JUDGE**